Exhibit K

In The Matter Of:

CITY OF PONTIAC v

LOCKHEED MARTIN

June 20, 2012

SOUTHERN DISTRICT REPORTERS

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
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CITY OF PONTIAC,

Plaintiff, New York, N.Y.

v. 11 Civ. 5026 (JSR)

LOCKHEED MARTIN, et al.,

Defendants.

----------x

June 20, 2012
4:15 p.m.

Before:

HON. JED S. RAKOFF,

District Judge

APPEARANCES

ROBBINS GELLER RUDMAN & DOWD, LLP
Attorneys for Plaintiff
BY: SAMUEL RUDMAN
EVAN KAUFMAN
JONAH H. GOLDSTEIN

DLA PIPER US LLP
Attorneys for Defendants
BY: JAMES WAREHAM
JOHN HILLEBRECHT
JOHN VUKELJ

(Case called)

THE COURT: So I had the privilege of giving a speech a couple of weeks ago down in Washington to a group of in-house corporate counsel and I pointed out that they on occasion come to my court. They never come to speak, of course. They come, as near as I can tell, to glare at their adversary or if things are going really bad to glare at the court. So there are all sorts of options available. Glad to have them here.

So this is the motion for class certification. There are really only two issues on which class certification is opposed. One is the question of whether the claims or defenses of the representative party are typical of the claims and defenses of the class, so-called typicality, and the other is whether the representative party will fairly and adequately protect the interests of the class.

In this kind of situation I am not sure that it necessarily makes sense to have one side or the other go first, but since the ultimate burden is on the plaintiff, we will hear from the plaintiff.

MR. RUDMAN: Thank you, your Honor. Do you care where I stand? Do you want me to speak from the podium?

THE COURT: No. So long as we can hear you.

MR. RUDMAN: Just for the record, we are here on our class certification motion seeking to certify a class of all persons that purchased Lockheed Martin stock between April 21, 2009 and July 21, 2009. Although the defendants haven't contested any of the elements, I wanted to state for the record that we have submitted, we respectfully submit that we have submitted sufficient proof to satisfy all of the elements of class certification.

THE COURT: The court has to find all the elements.

MR. RUDMAN: Right.

THE COURT: But let's deal with what is contested.

MR. RUDMAN: As I understand the argument on typicality, the defendants are arguing that Pontiac is atypical or subject to a unique defense because they continued to buy stock after the statement, the end of the class period, so-called post class period purchases. Your Honor held on this very same issue in the Monster Worldwide case that post class repurchases of stock do nothing to strip away the plaintiff's right to claim that they relied on the integrity of the market price at the time they purchased stock during the class period.

We submit, your Honor, that what happened here is on all fours with what happened in Monster. In the case that is cited in Monster, which I think is the Salomon Analyst case, that the post class period purchase of stock do nothing to render Pontiac atypical or subject to any other unique defense.

The second kind of twist on that argument that was made was that, well, Pontiac -- Ms. Zimmerman, who is the representative from Pontiac who testified, was asked

specifically if you knew a fraud was going on, would you instruct the money manager not to buy the stock, and the response was no. The defendants have cited that and said, see, it doesn't matter what is out there, they are going to buy stock even if they know a fraud is being committed.

THE COURT: But you are saying what she said is because that is not her decision, it is the investment committee's decision.

MR. RUDMAN: Correct. As your Honor is well aware, funds like this rely exclusively on money managers to make those purchases, and there was no testimony from any of the money managers that were deposed in this case that they knew about a fraud at Lockheed when they purchased the stock on behalf of the fund. So I think that argument carries no weight either.

The adequacy argument -- that is all I have on typicality as I understand their arguments, your Honor.

The adequacy argument is really twofold, as I understand it. The first one is, well, it is really one thing, which is, and it is not surprising, this plaintiff is not the kind of plaintiff that the defendants would like to see suing them. They claim that for some reason the plaintiff is being controlled by the lawyers and not prosecuting the lawsuit.

I think if you look at Ms. Zimmerman's testimony and you see what has happened in this case, you will see

Ms. Zimmerman took your Honor's admonition to closely monitor this case to heart, has been actively involved in the prosecution of this lawsuit. She e-mails or speaks with her lawyers three or four times a week and was able to at her deposition adequately describe this case.

Now the standard on adequacy is set really by the Baffa case in the Second Circuit, where an 18-year-old man was appointed or the denial of his class certification was reversed by the Second Circuit. Now, it is not a high standard and we respectfully submit that if you look at how Ms. Zimmerman has acted in this case and the fund has acted, that easily meet that standard.

The next argument the defendants raise with respect to adequacy is the monitoring argument, that for some reason because Pontiac has a monitoring agreement that makes them less likely to prosecute this case. For the life of me, I don't understand how you reach that conclusion from the fact that they have a monitoring agreement. I know your Honor has raised concerns about the monitoring agreements. I think it is important to understand why these funds have monitoring agreements to begin with. So I am going to go back in time just a little bit to explain how they came into existence.

There was a case many years ago called the Teledyne case in Cleveland. In that case an institutional investor was challenged as being inadequate to serve as a lead plaintiff

under ERISA. So the other lead plaintiff movant said you can't be a lead plaintiff because under ERISA you can't spend any money other than -- you can't utilize your resources for anything other than to benefit the funds. The institutional investor was the Florida State Board of Admission.

In response to that attack by another lead plaintiff movant, the Department of Labor filed a brief in the Teledyne case -- all this is in the briefing on the lead plaintiff motion -- and said, wait, you have a fiduciary obligation to monitor your investments for fraud and if you believe a fraud has been committed, do what is necessary to pursue that.

From that brief, from the Department of Labor brief, came monitoring agreements. That is why we have them. Funds went out and said, hey, the Department of Labor has said we need to monitor our funds for fraud.

THE COURT: I agree with your point, or at least I want to hear from your adversary, I don't really see why the existence of the monitoring agreement that led to the identification of this lawsuit affects the adequacy of the plaintiff. But the problem I have with monitoring agreements -- which I continue to have, but I didn't find it sufficient in the facts of this case to not appoint Pontiac as the lead plaintiff -- is that because they are free, because there is no charge being made, they arguably create an added incentive to the counsel that is monitoring -- which in some

agreements, not yours, was required to be the counsel if there actually was fraud -- an incentive to identify marginal cases as fraudulent because it is the only way the law firm gets paid for its services.

So that is the concern that I had, continue to have to some degree, but I don't think it affects any issue that is before me on class certification. I will be glad to hear anything your adversary has to say on that.

MR. RUDMAN: Then, your Honor, I think I am almost done on the adequacy point. The only thing I wanted to address was, there was some argument in the defendant's briefs that somehow by filing the lawsuit several days before the statute of limitations ostensibly ran -- I say ostensibly because even if the price drop was two years ago, it is not clear that under Merck, the Supreme Court's decision in Merck, when the statute of limitations would ultimately run. But assuming that is when it would have run, the argument in the defendant's papers are that there was some kind of, quote-unquote, scheme to get control of the lawsuit by doing that.

What I wanted to point out for the court is the PSLRA doesn't let you do that, your Honor. Once we filed the lawsuit, we had to publish a notice advising anyone that wanted to that they could come before your Honor and make a motion. So the fact of the matter is, the plaintiff here or our firm had no ability to preclude anybody else who wanted to be

involved in a lawsuit or take control of the lawsuit from doing so. Because the notice went out advising them if they wanted to make a motion, they should. The fact of the matter is no one else wanted to make a motion. Pontiac was able to become the lead plaintiff.

Unless the court has any other questions for me on those points.

THE COURT: No, that is fine.

MR. RUDMAN: Thank you.

MR. WAREHAM: May it please the court, your Honor, James Wareham on behalf of the defendant.

Failures are two in number under 23(a). They are inadequate, not just the retirement system but the Robbins Geller firm as well, and Pontiac is subject to unique defenses because of their atypicality. I am going to go through those very quickly.

Plaintiff in its papers complains fairly loudly that if the instant motions are denied the case will end, and for several reasons that really is of no moment. First, they cite to the case that we would cite to, Kline v. Wolf, in support of its position. In Kline v. Wolf, the Second Circuit affirmed the district court's denial of the motion for class certification when there was one and only one participant, one and only one competing class representative. The Second Circuit did it again several years later in Gary Plastic v.

Merrill Lynch, again, where a class certification motion was denied when there was only one putative class representative.

Now, the idiosyncrasies of this unusual case also cut in favor of a decision which ignores plaintiff's central argument, and the idiosyncrasies really do flow from the monitoring agreement, from the filing of the last day, from the facts that I am going to go through, some of which are very new now.

Now two years passed between the July 21, 2009 announcement plaintiffs complain about. They filed a very bare bones complaint. They lost $17,000. Not one of the 600 institutional investors did the plaintiffs identify in their current papers. 600 institutional investors in their own papers own about 86 percent of the company. Not one complained at any point in time. As Mr. Rudman pointed out, not even notice was found. This is not a case really about Pontiac retirement system. It is about Robbins Geller.

Now Ms. Zimmerman has testified since you saw her in your courtroom, your Honor, as a 30(b)(6) witness. She wasn't testifying about her own knowledge, by the way. What she said as to what happened with respect to the fund is what would happen with respect to the fund. She is a 30(b)(6). It is not her personal knowledge that is being exacted for this deposition.

THE COURT: Did you depose her for her personal

knowledge?

MR. WAREHAM: No, we did not, your Honor.

THE COURT: So I don't know how that cuts one way or the other. If you are saying that her answers don't necessarily reflect her personal knowledge because she was deposed as a 30(b)(6), that is fine, but you can't infer from that that her personal knowledge is greater, lesser, or anything else because you didn't depose her for her personal knowledge.

MR. WAREHAM: That is a fair point. The point I make is, it is an admission of the enterprise.

THE COURT: OK.

MR. WAREHAM: That in light of a fraud, knowledge of a fraud inside a company, the enterprise, not Ms. Zimmerman, would not instruct its investors -- excuse me, its investor advisors to refrain from purchasing or sell that stock.

THE COURT: OK. Now I understand your point. Go ahead.

MR. WAREHAM: Thank you, your Honor.

Now, she was alerted to the need to have immediate approval of a complaint less than 48 hours before the filing of the initial complaint. She was not told that the statute of limitations was expiring. She was not told why the approval had to be so hurriedly done.

Now, in your preliminary ruling, your Honor, you did

express skepticism about the tactics employed by Robbins Geller -- it is not us; it comes from the court -- who really is driving this litigation. And you did express skepticism about Ms. Zimmerman's oversight, and discovery has revealed some things that are troubling and lead to justification for the court's skepticism. I am going to go through a few things that demonstrate, not just in prose or conclusory words but in actual testimony, why Ms. Zimmerman's role has been inactive, why she stood back and let Robbins Geller run the lawsuit.

THE COURT: I want to go back just for one second. I am still thinking through your 30(b)(6) point.

So your point is that Pontiac having become aware of what they believed was a fraud continued to purchase the Lockheed stock and that that may subject them to unique defenses. What they are saying, though, is institutionally they relied on their money managers, their outside money managers to make these determinations. So while your point is well-taken, that it is not a question of her personal knowledge, it is a question of what the institution knew, what do you say to their response that the institution delegates these determinations to the money manager?

MR. WAREHAM: The institution is the plaintiff. The institution is subject to attack for being both a program trader, delegating all judgment out to some third party. That is not typical of a trader in today's market. And they are

subject to unique defenses because they did indeed either conclude that there was no fraud in the senior management at Lockheed, because they kept buying, or that they were just so irresponsible that they were atypical. So they are subject to unique defenses and they will be, if this case proceeds, which we have grave questions about, they will be subject to attack that their inactivity is different than the rest of the class they purport to represent.

So I wanted to go back to just a few minutes on the inactivity of Ms. Zimmerman, what she actually says.

THE COURT: I am just thinking aloud. If, for example, an otherwise valuable company engages in some fraud that if revealed would diminish the value of their stock but it is still a good buy, why wouldn't it be perfectly reasonable for a company to say, well, we want to sue them for what we lost and we are an adequate representative of what everyone lost, but that doesn't mean we don't think the company is so lacking in value that it is still not a good investment.

MR. WAREHAM: The best tutelage I can come up with is that from the Supreme Court in Basic v. Levinson. The court asked a very interesting hypothetical. Who would participate in a rigged game after they know the game was rigged. I misquoted it, but that is basically what it said.

The answer really is no responsible, no typical investor would. So around the edges they may have concluded,

but there is no evidence, and we have deposed the advisors, there is no evidence that anybody did that kind of analysis. There is no evidence that anybody inside the fund paid attention enough to have that kind of discussion.

They have delegated responsibility entirely and completely and they have said they don't care if there is fraud. Ms. Zimmerman didn't testify on behalf of the enterprise, we would study the circumstances, we would do a calculus and we would say, is it the CFO, is it the CEO. They just said blanketly we would not instruct this enterprise, we would not instruct our investment advisors to change their course.

That hypothetical question the court asked in Basic v. Levinson is indicative of what the court really thought should be the case, which is people who believe there is fraud should not continue to buy the stock. There are courts that have held that.

Your Honor did discuss this in Monster, and what the court really said was it is not in and of itself a disqualifying factor, and we are not arguing that that is the only factor that leads and mandates to the denial of these motions. In gestalt, as I go through the lack of adequacy and I go through new facts, I think in gestalt that conclusion that the court raised -- which is not our position. We are not saying the mere fact of the decision to go forward, as some

courts would prohibit as a class representative having bought the stock after the fraud, that is not the one thing. It is a gestalt analysis.

So she was asked, Ms. Zimmerman, because she reviewed pleadings and she said to the court before she does review near-final pleadings. She asked general questions. Was she ever able to identify to this court when she was here or in deposition months later any single question that Robbins Geller ever asked her or she ever asked Robbins Geller, one question she ever asked. The answer is no, can't think of one. Just as before, she still has not suggested a single change to any draft paper, not a single change. She cannot recall the very few motions that have been filed, including the motion that lead to the dismissal of two or three counts and lots and lots of discovery because of the outstanding motion to dismiss on the one count. Didn't know about the motion to dismiss. Didn't remember the motion to dismiss. She knew little to nothing of the so-called confidential witnesses, which I am going to turn to in some detail. She didn't know who they were. She didn't know who had interviewed them. She had not seen a witness statement. She had not met them. She didn't know their names. She didn't see notes of those interviews. She left that to Robbins Geller.

She knew nothing of the private investigation firm that is at the core of this case, a firm called L.R. Hodges,

which generated evidence by making phone calls to so-called confidential witnesses. She was shown a case that came out in 2012 called the Livonia case. It is a case involving, a Robbins Geller case brought against Boeing and its executives.

In that case the complaint filed by Robbins Geller was dismissed with prejudice because, and I quote the court: Material facts concerning the confidential source's position and personal knowledge were misrepresented by the plaintiff. She had never heard of that case. Her lawyers had not brought that case to her attention.

Moreover, in Livonia, the very same private investigation firm that is involved in this case was involved in that case. The court, the Northern District of Illinois in that case, concluded that it is likely or possible, excuse me, that an investigator from L.R. Hodges had offered false and perjured testimony to the court. She didn't know about that investigator. She never heard of who was involved in that case. She didn't know about that case.

The central point is she has taken no steps at any time to monitor this case, to check on counsel. She has taken no steps at any time to understand who was doing what and whether they are accused of improprieties in other important forums.

Now the retirement system has, to quote from this court in Monster, simply lent its name to a suit controlled

entirely by the class attorneys. That is what the record establishes.

Now, her lack of oversight is established conclusively in other respects at deposition. Robbins Geller argues in its paper that she has, quote, heeded the court's directive to monitor expenses. She has heeded the court's directive to monitor expenses. She has never questioned an invoice, your Honor. Why is that? She has never seen an invoice. She has never asked for an invoice. She went so far as to testify under oath that she is not going to ask for an invoice, that she is not going to review invoices. That is not heeding; that is ignoring. It is the opposite of heeding.

Now, again, we talked a little bit about the monitoring agreement, and it's problematic. She has testified that every single time --

THE COURT: On the subject of expenses, it is curious to me that on the one hand there are three attorneys here today on the plaintiff's side, which presumably will, if this case goes forward, be part of a lodestar application, where as near as I can tell there is only one attorney who is arguing and he is fully versed in all the issues here and fully capable of arguing it.

On the other hand, that may be overly harsh on my part when I see that there are three, indeed four people sitting at defense counsel table, where as near as I can tell there is

only one arguing and he is perfectly capable and perfectly familiar with all the facts.

So it is always, of course, a pleasure to have all you fine folks here, but I wonder why we need all these lawyers.

MR. WAREHAM: From my perspective I can tell you I know two of them aren't billing their time for this. I also know Ms. Zimmerman has not the foggiest notion who is billing time to the class. Not the foggiest notion. Hasn't looked at an invoice, hasn't asked for one, doesn't know who is billing to the class, doesn't know. I think the court pretty clearly admonished her at the front end of this case to know that type of stuff.

THE COURT: Well, I am glad to know that the other two are not billing their time. So now I guess the question is, is your law firm in such good shape that it can afford to have two folks sitting here not billing their time. But that is not a question for this court.

MR. WAREHAM: It is funny. Each time I have been in this particular courtroom in a securities case interesting things have happened. This is a very educational experience for those here and it has been that way -- I don't know why -- each time. And this case, as I am going to get to in a little bit, is taking another turn, an unpredictable turn.

THE COURT: OK.

MR. WAREHAM: Now, this monitoring agreement, she has

testified that every single time Robbins Geller came to them, the retirement system, and suggested there was fraud, they have authorized the filing of a lawsuit. Their own papers demonstrate that nine times in the past three years the retirement system of Pontiac has sought to be appointed as lead counsel. They are one unlucky investor.

Now, I went through a little bit atypicality. I think that the In Re Salomon decision and the discussion and logic in that case given the gestalt is more persuasive than the court's rule stated. Not a hard-and-fast rule but one that says it is not disqualifying to be subject to unique defenses because of trades in the market.

I will go right now, I actually have the quote in my notes from Basic v. Levinson: Who would knowingly roll the dice in a crooked crap game. Either the game wasn't crooked and there are such unique defenses --

THE COURT: I applaud the Supreme Court for its knowledge of crap games, but what I was suggesting is that while of course if someone thought that a company was involved in a fraud from top to bottom one wouldn't invest in that company. There are many, many, many situations where an otherwise well run and valuable company is accused -- sometimes rightly, sometimes wrongly -- of engaging in some overstatement or some misaccounting or misapplication, etc., that might state a claim under the securities laws and yet doesn't affect the

total value of the company. It affects one aspect of it. So an investor may have lost money because of that. The stock may have run up 10 percent above what it otherwise should be. It doesn't mean necessarily that the company is not still a good investment. That is why I am not sure that dictum from Basic is really dispositive of this issue.

MR. WAREHAM: I think it is instructive and in the main it is because this is not the controller and some regional manager that are defendants in this case. This is the chairman and chief executive officer. This is the chief financial officer. This is the head of one of the four major businesses in the company. That is the whole crap game.

THE COURT: Yes, but what they are claiming is that they knowingly hyped one part of their business above what it should have represented, and I have no opinion as to whether that is right or wrong, but they are not saying that it was an across-the-board fraud involving the entire company. It is one aspect that they are focusing on.

MR. WAREHAM: My point is if the crap dealer, the guy throwing the dice is in your mind a fraudster, you should be out of that game. I don't want to belabor that point. This is very senior people. This is not divisional stuff.

I wanted to close, your Honor, with a brief summary of some critical new facts.

Now remember the bare bones complaint was filed on

July 20, 2011. There is no evidence that any of the six confidential witnesses that are in the amended complaint filed in October were ever contacted by anyone on behalf of the plaintiff before the first complaint was filed. No evidence that any witness -- never mind those six -- was ever contacted by the plaintiff or its representative at any time before the first case was filed.

All presently known contacts of the six confidential witnesses involved a single private investigator, a gentleman in California. He made calls by himself. He is with that firm that is at the center of the Livonia controversy. No Robbins Geller lawyer ever met with or spoke to any of the so-called confidential witnesses before the second amended complaint was filed. And of course, Ms. Zimmerman knew nothing of the confidential witnesses, saw no statements, saw no memoranda, knew no names.

Your Honor, no affidavits or statements were obtained before the amended complaint was filed. None of the four so-called witnesses deposed to date, because we are in the course of generating a record for summary judgment, authorized anyone at L.R. Hodges or Robbins Geller to include information about them in the amended complaint or saw the amended complaint. All six --

THE COURT: What is it that you believe the confidential witnesses are adding to the complaint? What do

you think is there based on them that wouldn't be there otherwise?

MR. WAREHAM: We would posit that virtually the whole case, from the bare bones case to the amended complaint, the whole change really is these confidential witnesses. Now admittedly one, confidential witness No. 6, says so little that we are unlikely to pursue her in discovery in pursuit of dismissal of the case.

If one of the witnesses says in the amended complaint, as drummed up by L.R. Hodges in California, that Linda Gooden instructed her to change backlog, and this case is ostensibly to some degree about backlog -- while we don't have the benefit of the court's opinion, we think that helped get across the line. That individual, your Honor, in affidavit and now on cross-examination, says the following: I had nothing to do with backlog while at IS and GS. I never had any communication with Ms. Gooden of any kind, not written, not e-mail, not verbal, not telephonic. She says under oath: If I saw Ms. Gooden in the hallways at IS and GS while I was there, I wouldn't have recognized her.

You take confidential witness No. 5, your Honor -- he is identified in the amended complaint as the president of one of the largest divisions of the company. The complaint says he would say: I didn't think in the beginning of '09 we could make our projections. I thought our projections were arbitrary

and I told Linda Gooden, one of the defendants, that we would not make our projections.

He has testified under oath, with independent counsel, that he never talked at any length, at any substance with this private investigator. He has denied flatly ever saying that to the private investigator. More important, he has said that the financials for IS and GS for 2009 were not arbitrary. He just said that he believed that they were makeable numbers, and he said that he never said anything attributed to him in the amended complaint to Ms. Gooden.

This is important stuff, and there are more examples. I don't want to belabor this because we have videotaped deposition, we have written record, and it is coming in next week in the form of a summary judgment motion pursuant to the court's instruction.

So the point really is, who is running this? When we were trying to get the identity of the confidential witnesses, we actually got to the very call, to call the court to ask for permission to file a motion to compel. In that call, the plaintiffs finally gave the names or agreed to give the names. What did they do? Robbins Geller after that, or right before that, contacted, through the private investigation guy in California, all six of these witnesses and offered to pay their legal fees for a sole practitioner, one reference, one guy, a sole practitioner in New York, who happens to be two things.

One, a former partner at the predecessor law firm of Robbins Geller, and, two, a man that has used the private investigator in question in the past.

So we have studied New York ethics rules and it might be possible to do what Robbins Geller has done as long as there is independence. I don't think it is for today to argue the question of whether this person who has been referred to the six people is independent.

Now, three of the six agreed to use that individual, one of whom, this confidential witness No. 2, I have already taken you through her testimony. Even with this lawyer in place, she has steadfastly, in response to unbelievably boisterous, loud, aggressive testimony -- questioning, excuse me, she steadfastly said that she did not say any of those things to the private investigator and, more importantly, she doesn't believe them.

Who is running the lawsuit? It is Robbins Geller who is running the lawsuit. Whose interests are at stake here? Robbins Geller's interests are at stake here.

THE COURT: Who is that lawyer?

MR. WAREHAM: It is Frank Karron, and I am not casting aspersions on Mr. Karron. He is a sole practitioner and he is trying to make a living.

As I said, of the three people that agreed to the suggestion for free counsel, paid for by Robbins Geller, one is

being deposed on Friday, one does not want to be deposed and, as I said, she is confidential witness No. 6. We are probably OK with that. One has already gone forward. The record will come before the court and the video will come before the court reflecting that she stuck to her view of the facts. She stuck to her beliefs.

So I am not suggesting that in and of himself he has done anything improper. Why a law firm would pay for third-party witness counsel itself is perplexing to me. I have been doing this 25 years. I have never seen it. It disturbs me. That will come before the court as well.

THE COURT: I agree it is probably not ripe for today's discussion. I wonder whether those witnesses, those three witnesses don't have potentially mutually antagonistic interests such that one lawyer could not represent all three.

MR. WAREHAM: Well, I think so. And, second, your Honor, do these people know that the man at the core of this, that we believe fabricated information, this private investigator out in California, do these people know that this individual lawyer has used that same investigator in other cases. That presents a whole other avenue for exploration on conflict.

Again, that is not before the court today, but to try to, from the monitoring agreement, to the tactics to block other people, to the inclusion of confidential witness

statements, with no one inside the firm forming any view on validity, on credibility, to the attacking, viciously attacking their own witnesses, I wonder what is behind the concept that you rest your complaint on six confidential witnesses and you have now spent hours trying to determine if they are absolutely credible.

So I assume, your Honor, that that is what they will continue to do, that they won't analyze the veracity of this one guy making phone calls out in California from the suspect firm, that they will call all the people liars. I assume they will attack my motivations and the way we contacted these people.

What I wanted to do in closing, your Honor, is say these facts go right toward the question of adequacy, not just of the class representative who has delegated its entire case from start to finish but of the firm itself. All I ask is until that record is developed and the court sees both sides of the aisle and understands their views of the facts that it hold abeyance the ruling on these two motions.

THE COURT: Thank you very much.

Let me hear from plaintiff's counsel.

MR. RUDMAN: Your Honor, I think I can be brief. First of all, look, we have a summary judgment motion coming up. Discovery is not closed on this confidential witness issue. I mean, Mr. Goldstein is here because he specifically

was dealing with this issue. He took the depositions. If your Honor would like to hear our counterpoints to the points that Mr. Wareham made, I am happy to have him speak about what happened with the witnesses. There is still discovery ongoing and there is going to be more discovery from us in terms of the confidential witnesses.

THE COURT: Let me ask you this. What is the name of this investigator again?

MR. RUDMAN: L.R. Hodges, and the investigator's name is Ken Keatley.

THE COURT: Before filing your either original or amended complaint, what information had you received from him?

MR. RUDMAN: We conducted an investigation, your Honor.

THE COURT: No, no. Answer my question.

MR. RUDMAN: I'm not sure I understand the question.

THE COURT: The question is, what information did you receive from this investigator? Did you get affidavits? Did you get a report?

MR. RUDMAN: OK.

THE COURT: Did you get an oral presentation?

MR. RUDMAN: Now I understand it. We got memos from the investigator.

THE COURT: So maybe I should hear from your colleague.

MR. RUDMAN: Hold on a second.

THE COURT: Excuse me.

MR. RUDMAN: I'm sorry, Judge.

THE COURT: Let me hear from your colleague.

MR. GOLDSTEIN: Sure, your Honor.

THE COURT: There must have been a miscommunication there. I said I needed to hear from your colleague and you asked him to sit down.

MR. RUDMAN: I'm sorry, Judge.

THE COURT: If you ever do that again in my court, you will be in contempt of court.

MR. GOLDSTEIN: Your Honor, I am happy to answer any specific questions. The reason I am here today is even though we believed it was going to be a class certification hearing and that would be limited to issues that related to class certification, we thought Mr. Wareham might take the opportunity to raise the issues --

THE COURT: That certainly answers one of my earlier questions.

So the defenses alleged -- and this may go to this motion, it may only go to the summary judgment motion. I don't know. But since it has been raised and since that is why you are here, let's hear from you on what he had to say.

MR. GOLDSTEIN: Certainly, your Honor. I would like the court to understand that there were six witnesses that were

in the complaint. We have taken testimony now from four. I would like the court to understand, first of all, what each of these witnesses is bound by and what their motive is to come in and say what is in the affidavit that DLA Piper wrote for them and to which there has been numerous corrections by those witnesses on the record as saying certain portions of them aren't accurate. But those witnesses, your Honor, each of them have a confidentiality agreement, a nondisparagement agreement with as much as $200,000 at stake for the rest of their lives. That is Mr. Asbury. Your Honor, it is clear that these witnesses are scared. One of the witnesses --

THE COURT: I'm --

MR. GOLDSTEIN: No, no.

THE COURT: Excuse me.

MR. GOLDSTEIN: I wasn't --

THE COURT: First I had one plaintiff's counsel in effect trying to countervene the court's instruction that his colleague speak and then I just saw, let the record reflect, counsel -- I am speaking of the plaintiff -- putting up his hand to direct the court not to interrupt him.

MR. GOLDSTEIN: I apologize, your Honor.

THE COURT: You --

MR. GOLDSTEIN: I apologize greatly, your Honor.

THE COURT: Now my question is you had used this investigator before.

MR. GOLDSTEIN: Our firm has used the investigator before.

THE COURT: I don't know anything about this other case other than what I have seen in the papers, but I take it that his credibility has been cast into doubt in some other case.

MR. GOLDSTEIN: Not this specific investigator, sir, that was used, but the firm for which he works for, yes, sir.

THE COURT: Was that before or after you retained that investigator firm on this case?

MR. GOLDSTEIN: Your Honor, I will speak to the best of my ability, but I may need to refer to Mr. Rudman as I was just added to the case.

I do believe that the issue was pending, that we hired the investigator while the issue was pending. I'm not certain as to that and I would defer to Mr. Rudman. I am just not sure, your Honor.

THE COURT: Now he supplied you with memoranda, is that it?

MR. GOLDSTEIN: Your Honor, what this investigator did, and I will be full and complete -- we have provided it on the privilege log because we believe it constitutes our work product. He took contemporaneous notes of the conversations, which are substantial. He then, in short time, as close as the next day or the very same day, converted those notes into a

memorandum, single spaced, which go anywhere from five to 15 pages, single spaced, which detail to the best of his ability what was said on those calls. He did not record the calls as they are not allowed to do so in California. Then he provided those memorandum to us, which we then used in formulating the amended complaint, as I understand. But again, I would defer, your Honor -- I want to make sure I am not --

THE COURT: Did he have anyone with him when he did this?

MR. GOLDSTEIN: I don't believe so, sir. I believe he was the sole person on the phone at the time and that that is normally the practice of most investigative firms that are used a lot in these cases, and in my experience even as a federal prosecutor that typically a lot of times the agents would be one on one, so to speak.

THE COURT: Well, the reason I raise that is your adversary says that at least one witness has flatly denied ever saying anything like what your investigator said she said. To the extent that becomes an issue for the court, I would probably have to take the testimony here in this courtroom of both the witness and the investigator. I wanted to know if there are any third persons involved, but apparently not.

MR. GOLDSTEIN: May I interject, your Honor?

THE COURT: Yes.

MR. GOLDSTEIN: Your Honor, with respect to some of

the things specifically that Mr. Wareham said, for example, that Mr. Asbury, who, by the way, Lockheed paid for his counsel, just as an aside, as we are being accused for paying for counsel. They got him counsel and he is a former executive. They paid for, he testified under oath --

THE COURT: I just had an interesting case, United States v. Gupta, in which defense counsel, having received, according to the press, some $30 million from Goldman to pay for the defense, spent most of his summation attacking Goldman. So these things happen.

I am a little more concerned, but I don't want to get derailed on this now, whether one person can represent all the confidential witnesses or some combination of them. Anyway, go ahead with what you were saying.

MR. GOLDSTEIN: Your Honor, what he testified to, for example, was that he spoke to Mr. Keatley, the gentleman's name, for no longer than five minutes. We have subpoenaed the records. Mr. Keatley's phone log shows that he spoke to him for 50 minutes. We believe that the records from Mr. Asbury's corporation as well as his personal records will indeed show that.

I think, your Honor, that just begs the point, in these depositions there has been some harmful testimony that shows the manner by which these declarations have been obtained by the defendants and I would like to tell the court about some

of the conduct that DLA engaged in if they are casting aspersions on us.

THE COURT: All right.

MR. GOLDSTEIN: Your Honor, for example, one of the witnesses testified -- I am happy to read it to the court -- that Mr. Wareham promised him that if he signed the affidavit he wouldn't have to testify. He said here, your Honor: Explain to me exactly what they said, that hopefully by signing this declaration that it will be enough evidence that you wouldn't have to come and testify?"

"A. That this would -- I don't remember the specifics. It was pretty much that, yes, I wouldn't have to come and testify."

"As a lawyer representing Lockheed, you believed them, didn't you?"

"Yes."

"Because you understand that Lockheed hires very smart and powerful lawyers?"

"Yes."

"And if a lawyer from Lockheed says, hey, if you do this and you won't have to come testify, you thought you should do this, right, sir?"

"Objection. You can answer, sir."

"I can get on with my life."

"You wanted to get on your with your life by signing this, sir?"

"Yes, because I am not really -- I really don't feel that I have no interest."

That is one witness, your Honor.

THE COURT: Well, a lot of that was leading questions, which of course was permitted, but I am not sure how much weight I can give to what you just read to me. It would be one thing if the Lockheed lawyer said if you sign this, you won't have to testify. It is another thing if the lawyer said, look, we are going to be bringing a motion, we are very hopeful this motion will succeed. If it does succeed, you won't have to testify, and so forth. That would cast a rather different spin on it. It is a little hard to know at this point.

MR. GOLDSTEIN: Certainly, I understand. Your Honor, that begs the point that really these are issues that will be fully litigated in that motion. I do want to inform the court what happened at these depositions because Mr. Wareham stood up and made it seem like these witnesses came in and said this gentleman made these things up and that that's the end of the story.

That is not what occurred in these depositions, sir. Witnesses testified that they spoke to him for brief five minutes, ten minutes, and then were confronted with phone records showing that they in fact spoke with him for 50 minutes. The witnesses came in and they said wholesale, I don't remember what I said to that investigator. One of the

witnesses was presented with specific allegations of the complaint attributed to him and he said, yeah, that could happen. In fact, I believe that did happen at Lockheed, that they replaced experienced personnel with inexperienced personnel in order to reduce costs. Did I say that to the investigator? I don't remember.

Your Honor, there was clearly a lot of wholesale memory loss by these witnesses. I think in any case in most trials there are cases where witnesses say something and then they recant. That is a credibility issue that we have all been faced with. It does not mean that we committed fraud or that this investigator made these things up.

Your Honor, some of the testimony that was elicited, for example, in Mr. Asbury's deposition was I asked Mr. Asbury whether or not there were program review meetings. He said yes. I said what day of the week. He said Tuesday. I said afternoon or evening. He said afternoon. That's precisely what Mr. Keatley wrote in his memoranda.

It begs the question, how is Mr. Keatley so prescient that he can pull that out of thin air.

There are other things, specifics, your Honor. For example, in Ms. Burns' testimony, she was asked about certain internal programs and she talked about a dashboard in which certain things were placed to evaluate the program. That was volunteered. That word was not even presented to her. Again,

that specific description of the dashboard program is in Mr. Keatley's memorandum.

What Mr. Wareham would say and what these declarations apparently say is, I spoke to Mr. Keatley, I told him I couldn't speak to him and then nothing more was said. And obviously that keeps them within the confines of their confidentiality agreements, their nondisclosure agreements, their nondisparagement agreements, and it keeps their pensions intact.

I am not saying they were intimidated with respect to that. The testimony has not been that Mr. Wareham said here is your confidentiality agreement, you are in violation. I am not representing that to the court. But clearly these witnesses spoke to the investigator. There are specifics that will be confirmed in the memoranda. We intend to present evidence from the investigator.

It is beyond logic to think that a man would make up ten pages of handwritten notes, including information, your Honor, that in some cases doesn't help us. In some cases, with respect to Mr. Asbury, he was asked did you discuss with Mr. Keatley whether or not certain programs were the cause of the miss in the Sackett court, and his response was no. I didn't speak with him at all. Well, in fact, what it says in Mr. Keatley's memo, which we are going to present, is that he told Mr. Keatley, don't go down the programs road.

Now, why would the investigator put that in a memo. Why would I ask that question. Where would I even get that information from, that quote, if it wasn't discussed by Mr. Asbury.

What we believe, your Honor, independent records will show is a 50-minute conversation. It defies logic to think that for 50 minutes educated people -- Mr. Asbury is the president of the civil division -- would say nothing more than, sir, let me ask you a question. Mr. Keatley: Let me ask you a question about your division. I'm sorry, sir, I am bound by a confidentiality agreement. That discussion would take two minutes.

I believe that the court will have the benefit of those subpoenas. It will have the benefit of his testimony in full to see that in fact what happened here is what happens in a lot of cases. My experience in many criminal cases during my time with the government is that witnesses recant. They have motivations for recanting and then they say things and then ultimately they recant.

Your Honor, I will represent to you we are going to take another gentleman high up and we believe, based on an e-mail that we received and based on my conversation with his counsel, that he wrote an e-mail essentially saying that Lockheed Martin committed fraud. This is Mr. Asbury's deputy. The court will have that evidence before it. That we simply

didn't come in here and make this up.

THE COURT: All right. That is very helpful. I will let you sit down.

MR. GOLDSTEIN: Thank you, your Honor, and I apologize again. I appreciate your time.

THE COURT: So was there anything else, Mr. Rudman, you wanted to say?

MR. RUDMAN: Your Honor, I want to apologize. I meant you absolutely no disrespect.

I want to talk about a couple of things. The first thing was we had a lot of discussion about this whole Basic v. Levinson, it is a quote that plaintiff's lawyers love, which is no one would play in a loaded craps game.

THE COURT: You mean defendant's lawyer.

MR. RUDMAN: Yes.

THE COURT: I think you said plaintiff's lawyers.

MR. RUDMAN: We like Basic v. Levinson, but aside from that point, the game was over here. By the time they make their purchases, there was no game. The game ended the end of the class period.

Mr. Wareham's point is if they think they were bad guys during the class period, then the truth comes out and they continue buying, that renders them somehow atypical. There is 680 some odd institutional investors Mr. Wareham mentioned, by the way, probably all continued buying, all bought through the

class period and continued buying after. So to that extent Pontiac is just like everybody else who is a member of this class. The point really is the game is over.

There was a lot of argument about Ms. Zimmerman's involvement here. We cite the cases in our brief, your Honor, that a class representative can rely on the expertise of their lawyers. Pontiac is not a securities lawyer. They hire a securities lawyer to do a securities case. It is not surprising that Ms. Zimmerman or anyone at Pontiac can't help out with the scienter section in the brief. That is not what they do.

I think, your Honor, if you look --

THE COURT: I think we are reaching the point of diminishing returns and I think I understand the arguments from both sides.

What do you say to defendant's suggestion that I should reserve on this motion until the upcoming summary judgment motion that they are filing because it, first of all, may moot it and, second of all, even if it doesn't, it will inform my evaluation of this motion. Do you have a view on that?

MR. RUDMAN: Yes. My view is you should rule on the motion in the ordinary course that your Honor would rule on the motion. I don't see any reason to delay.

THE COURT: OK.

MR. RUDMAN: What I do want to mention, though, because this brings me to my last point, I can send your Honor the cite in the Medtronic Securities Litigation, which I think I mentioned once on a call with the clerk. The very same fact pattern occurred. Seven, eight, nine, ten confidential witnesses all supposedly recanted. The issue was brought up in that circumstance saying counsel's inadequate because look at the investigation they did and how all these witnesses recanted. The judge in Medtronic said that is an issue for summary judgment, that is an issue for discovery, and certified the class.

I am happy to provide the court with that opinion. I recognize it is from a district court in Minnesota, but it still is informative in that it was the very same issue they are suggesting here.

THE COURT: Sure. I would be happy to look at it.

MR. RUDMAN: Thank you, your Honor.

THE COURT: I don't know that one can draw any hard-and-fast rule about recantation or not recantation. What your adversary is suggesting is that your investigator was making things up. Your colleague has suggested that there is substantial evidence to the contrary.

We all understand that on the one hand there are motives sometimes in talking to an investigator to say negative things and there are motives when talking in a deposition to

say positive things, and the people in these situations are under pressures of a variety of sort. You can't make I think generalizations. You have to look at the individual and the circumstances. But if there were hypothetically in some case clear undisputed evidence of fraud on the part of an investigator, that is something the court would have to look into regardless of any motion. That would be a matter potentially of obstruction of justice.

I haven't heard anything yet that gives me a basis for concluding anything about this one way or the other, but I am looking forward to what I will be presented with in the upcoming summary judgment motion.

I should add, by the way, that even if an investigator were to have obstructed justice in some case, that doesn't necessarily go to any of these matters -- it may or may not -- because a reasonable plaintiff's counsel could rely on what appeared to be a perfectly straightforward presentation by an investigator without being aware that he or she had falsified something.

In giving that hypothetical I don't even mean to suggest that the investigator did falsify anything. I don't have any opinion on any of this. I am just saying that it is not something one can evaluate without a lot more specifics than I have now.

Yes.

MR. RUDMAN: Your Honor, you should know we are before you on many matters, we are in this court all the time on these cases, and we obviously take our responsibilities and our obligations to the court extremely seriously.

THE COURT: That is fine. All right.

I will give your adversary one last shot if he wants to say anything further and then we will call it a day.

MR. WAREHAM: I want to say thank you for staying so late, your Honor. I have nothing to say.

THE COURT: Very good.

The court will take the matter under advisement.

Thanks a lot.

(Adjourned)

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